

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Federal-State Joint Board on Universal )  
Service: Promoting Deployment and )  
Subscribership in Unserved and )  
Underserved Areas, Including Tribal and )  
Insular Areas )

CC Docket No. 96-45

To: The Commission

### COMMENTS

Dobson Communications Corporation ("Dobson"), on behalf of its cellular licensee affiliates, hereby responds to the Commission's *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.<sup>1</sup> In the *FNPRM*, the Commission seeks public comment on issues that may limit telecommunications deployment and subscribership in the unserved and underserved regions of the Nation, including tribal regions and insular areas.<sup>2</sup> In addition, the Commission seeks public comment on potential policy initiatives it can take to address and enhance the opportunities to serve the telecommunications needs of these areas. Dobson generally supports these efforts and addresses herein proposals to clarify circumstances in which the Commission may designate eligible telecommunications carriers ("ETC") for purposes of universal service support. As discussed below,

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<sup>1</sup> *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking*, FCC 99-204 (rel. Sept. 3, 1999) ("*FNPRM*").

<sup>2</sup> In referencing "Indians," "Indian tribes," and "tribal lands," Dobson is incorporating the definition outlined by the Commission in its *FNPRM*. See *FNPRM* at ¶ 6, n. 24.

if treated on a technology- and competitively-neutral basis vis-a-vis wireline carriers in the ETC designation process, CMRS carriers can play a significant role in addressing the telecommunications needs of Native Americans living on tribal lands, as well as residents of other high cost/unserved and underserved areas.

## **BACKGROUND**

Dobson is a leading provider of rural and suburban cellular services throughout the country. Dobson began providing cellular service in 1990 in Oklahoma and the Texas Panhandle; from that modest inception, Dobson has rapidly expanded its cellular operations with a primary focus on rural and suburban areas with substantial needs for cellular communications. Several of Dobson's rural cellular markets cover tribal land areas. Additionally, Dobson is the managing general partner of Gila River Cellular General Partnership, a general partnership consisting of Dobson and the Gila River Indian Community, which is the Block B licensee in the Arizona 5 - Gila RSA. Dobson has been working closely with the Gila River Indian Community to establish telecommunications services throughout their tribal community. Based on its history of assisting Native American tribes with the provision of telecommunications services, Dobson is well positioned to provide the Commission with insight on methods for enhancing the opportunities and incentives to provide telecommunication services to tribal communities. In this regard, Dobson may apply for ETC designation in many of its cellular markets to help support services to high cost and rural areas, thereby offering consumers an alternative to the incumbent local exchange carrier. Dobson believes that, in many markets, access to universal service support may be essential for wireless carriers to deliver competitive telecommunications services to high cost areas.

## DISCUSSION

In the *FNPRM*, the Commission seeks comment on, among other issues, an interpretation of Section 214(e)(6) of the Communications Act.<sup>3</sup> Section 214(e)(6) authorizes the Commission to designate as an eligible telecommunications carrier “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”<sup>4</sup> Only carriers designated as ETCs are eligible to receive federal universal service funds to support services to customers living in high cost and rural areas.

Dobson supports the Commission’s tentative conclusion that by adopting this section, “Congress intended that carriers serving *all regions* of the United States have access to a mechanism that will allow them to be designated as eligible telecommunications carriers. . . .”<sup>5</sup> Moreover, Dobson believes that this goal is fully achieved by allowing all carriers, regardless of their technology (wireline or wireless) access to an ETC designation mechanism. Indeed, in the initial *Report and Order* in the universal service proceeding, the Commission adopted “competitive neutrality” as one of the guiding principles for the advancement of universal service.<sup>6</sup> Under this principle, the universal support mechanisms, including determination of eligibility, should not

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<sup>3</sup> *FNPRM* at ¶ 75.

<sup>4</sup> 47 U.S.C. § 214(e)(6).

<sup>5</sup> *FNPRM* at ¶ 75. (emphasis added).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8801 (1997).

“unfairly favor or disfavor one technology over another.”<sup>7</sup> The Commission should monitor state trends in this arena and, where appropriate, preempt state actions, pursuant to Sections 253(d) and 332(c)(3) of the Act to ensure compliance with this policy.<sup>8</sup>

The Commission also seeks comment on situations in which carriers serving areas other than tribal lands are not subject to state jurisdiction, and whether it, rather than state commissions, has jurisdiction to designate terrestrial wireless or satellite carriers as ETCs.<sup>9</sup> Based on precedent to date, it appears that the Commission will often have sole jurisdiction over wireless carriers for ETC designations. Section 332(c)(3) of the Act specifically preempts states from regulating the market entry and rates of CMRS providers, and in part because of this statute many states do not exercise ETC jurisdiction over CMRS carriers. Consistent with Section 214(e)(6), CMRS carriers therefore must turn to the Commission to request ETC designation when states decide not to participate in the designation process.<sup>10</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *See* 47 U.S.C. §§ 253; 332(c)(3)(A). In at least one state, a wireless carrier’s efforts to obtain ETC status before a state commission have been thwarted. *See* Western Wireless Corporation, Comments on Federal-State Joint Board on Universal Service in CC Docket No. 96-45, filed January 11, 1999, at 16-20; Western Wireless Corporation, Petition for Preemption of an Order of the South Dakota Public Utilities Commission, filed June 23, 1999 (in which Western Wireless Corporation alleges that the South Dakota PUC’s denial of an ETC designation on the basis that Western was not presently offering universal service comparable to that of the ILEC serves as a barrier to new entrants).

<sup>9</sup> *FNPRM* at ¶ 77.

<sup>10</sup> *See, e.g.,* Western Wireless Corporation, Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, filed Sept. 29, 1999; Cellco Partnership d/b/a Bell Atlantic Mobile, Petition for Designation as an Eligible Telecommunications Carrier, filed Sept. 8, 1999 (seeking ETC designation in Delaware and Maryland).

Further, to the extent that the Commission has jurisdiction over the designation of ETC status, Dobson urges the Commission to evaluate petitions from wireless carriers with the same competitive – or technology – neutral standard that states must employ. As noted previously, distinguishing between carriers on the basis that they are wireless or wireline is unwarranted in the ETC designation process.<sup>11</sup> Rather, the types of services that a carrier provides, pursuant to Section 254(c) of the Act, should be the determinative factors in granting a carrier ETC status.<sup>12</sup> Denial of ETC designations for wireless carriers will create an uneven playing field, and a carrier's technology should be a non-factor in the Commission's decision making process when examining ETC petitions. To do otherwise will be frustrate the Commission's objectives in this proceeding.

The Commission also seeks comment on the circumstances under which it “may designate carriers as eligible telecommunications carriers” with respect to the provision of telecommunications service in tribal lands.<sup>13</sup> Dobson supports the Commission's tentative conclusion that for purposes of Section 214(e)(6) “the determination of whether a carrier is subject to the jurisdiction of a state commission depends in turn on the nature of the service provided (*e.g.* telephone exchange or access service provided by wire, satellite, or terrestrial wireless) or the geographic area in which the service is being provided (*e.g.* tribal lands),” rather than whether the carrier itself is subject to state

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<sup>11</sup> See *FNPRM* at n. 47 (commenters in related proceedings asserting that wireless carriers have difficulty accessing universal service funds).

<sup>12</sup> The particular services that constitute universal service, as well as the other requisite elements of a petition for ETC status, are described in *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997).

<sup>13</sup> *FNPRM* at ¶ 78.

jurisdiction.<sup>14</sup> For these reasons, the Commission should exercise jurisdiction over CMRS carriers' ETC designation for service to tribal lands where states do not have jurisdiction themselves.

Finally, Dobson believes that the Commission should make clear that CMRS carriers who have reached agreements with tribal authorities to provide telecommunications services to Native Americans on tribal lands should in some instances be eligible for programs (such as universal service support) that assist the provision of services to such high cost areas.<sup>15</sup> Eligibility under specific programs would likely need to be considered on a case-by-case basis; if, however, a tribal authority has chosen a CMRS carrier to provide basic telephone services to all or part of its tribal lands, there is no reason why such carrier should not qualify for the federal support that has been established for service to high cost areas. Such economic incentives can expedite the provision of services to these areas, and the imprimatur of an agreement with the tribal authority assures that Native Americans' interests are being considered when such funds are being distributed. The Commission can avoid extended controversies in this regard by clarifying its position in this proceeding.

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<sup>14</sup> *Id.* The Common Carrier Bureau in at least one instance already has designated an ETC serving tribal lands. See *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 98-2237 (rel. Nov. 4, 1998) (granting the petition for ETC designation filed by Saddleback Communications, a common carrier providing telephone exchange service and exchange access to the Salt River Pima-Maricopa Indian Community).

<sup>15</sup> See Dobson comments in *Extending Wireless Telecommunications Services to Tribal Lands*, in WT Docket No. 99-266, filed Nov. 9, 1999, at 12-13 .

## **CONCLUSION**

For the reasons stated above, (1) designating CMRS carriers as ETCs will serve the Commission's goals of expanding telecommunications services on tribal lands, underserved, and unserved areas when states lack jurisdiction to do so; and (2) the Commission should evaluate ETC petitions on a technology neutral basis.

Respectfully submitted,

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